

*D. Livingston*

THE SOCIAL AND  
LEGAL STATUS  
OF THE JEWS OF  
FRENCH MOROCCO

BY  
ANDRE CHOURAQUI

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# THE SOCIAL AND LEGAL STATUS OF THE JEWS OF FRENCH MOROCCO

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ANDRE CHOURAQUI

(1953)

## PREFACE

In the last two decades or so Americans have learned their geography the hard way. We have learned it by studying the little arrows on military maps in the newspapers indicating the changing fortunes of the armies of democracy throughout the world, and by hearing reports of endless crises in parts of the world of which we had previously been blissfully unaware.

French Morocco commanded the close attention of this generation of Americans only in 1942, when American soldiers landed on the shores of that country preparatory to driving Hitler's Nazi forces off the continent. During the last year or two French Morocco has again made news here as a result of a political dispute over the degree of Moroccan independence of France. In fact, the whole Islamic and Arab world from Morocco to Iran has now become an area of special concern to all Americans and especially to American Jews. With the decimation of Jewish communities in Eastern Europe, those in North Africa and Southwest Asia have assumed greater importance to us. In addition, of course, the young republic of Israel is building a Western-oriented nation in the heart of this tradition-bound civilization.

The American Jewish Committee, which was founded in 1906, according to its charter, to "prevent the infraction of the civil and religious rights of Jews in any part of the world" and "to secure for Jews equality of economic, social and educational opportunity," has an obvious interest in the status and welfare of the more than 200,000 Jews who live among the 8,000,000 Moslems in French Morocco. As M. Chouraqui so ably points out in this comprehensive study, the Jews of Morocco are in effect second class subjects of the Sultan.

The Jews of Morocco, Sephardic in their religious ritual and in the pronunciation of Hebrew, are an ancient community in that country. There were some Jews there even before the Arab and Moslem invasions in the seventh century A.D., and many fled there from Spain in the fifteenth century. These two Jewish traditions, the native Moroccan and the "Castilian" or Spanish, still persist although they have been by this time considerably fused.

Among the Jews of Morocco today, as M. Chouraqui shows in detail, there is a strong Western orientation and a growing desire to discard those remnants of medievalism and backwardness which still mar their lives. In this development the influence of the Alliance Israelite Universelle has been great. The Alliance has had a long and glorious history of aid to the Jews of North Africa and Southwest Asia.

As we American Jews now become interested in the fate of our brethren in Morocco, we find that there is a vast and delicate task to be accomplished. M. Chouraqui makes quite clear in the following chapters just what are the disabilities of the Jews in French Morocco and what are their needs. He offers two groups of suggestions. One, concerning Moroccan problems in general, calls for a citizenship code, effective guarantee of civil liberties, creation of legal codes and an independent and effective judiciary. His second group of recommendations, which concerns the Jews more directly, calls for greater employment opportunities, the independence of the Jewish communities, improvement of the Rabbinical courts, certain profound reforms of Jewish personal status and the emancipation of women.

M. Chouraqui is especially qualified to write on the subject of Jewish status in a Moslem country. Born in Algeria only thirty-five years ago, he holds the degree of Doctor of Laws from the University of Paris, and has been a member of the bar of Oran and a magistrate in Algiers (both in Algeria). He is more than a legal scholar, however, for his interests and his works touch philosophy as well. He has translated from Arabic into French the famous book of Jewish ethics, *Introduction to the Duties of the Heart*, by Bayha Ibn Paquda, the Jewish philosopher who lived in Spain in the eleventh century. M. Chouraqui has recently published a new translation of *The Song of Songs*. He is also the author of *The Birth of the State of Israel* and has just published a study of the status of the Jews in all of North Africa.

M. Chouraqui's accomplishments go beyond scholarship. During the occupation of France by the Nazis he was a leader of the Resistance in the Maquis in Central France. He is Assistant Secretary General of the Alliance Israelite Universelle, and Secretary General of the Society of Jewish Studies and of the Council for Jewish Education and Culture in France.

The American Jewish Committee publishes in English this abridgement of M. Chouraqui's French study as a comprehensive review of the status of Jews in French Morocco. We are firm in our conviction that it will direct the interest of Americans, Jews and non-Jews alike, toward the need for advancing the human rights of a large and depressed minority in a part of the world that is quickly growing in importance for the West.

In presenting this study the American Jewish Committee does not necessarily subscribe to all the views or opinions of its author. However, we hope that it will contribute greatly to the understanding of the Moroccan situation and of the need for further advancement of the legal status and the economic welfare of Moroccan Jewry.

Jacob Blaustein  
President, American Jewish Committee

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## I. INTRODUCTION: THE JEWS OF FRENCH MOROCCO

### *Discovery of a Community*

American Jews have reacted to the annihilation of six million of their co-religionists in Europe in much the same way as the surviving members react to a family catastrophe: they feel a greater kinship with those lucky enough to have lived through the ordeal. American Jews have thus "discovered" the Jews who have lived for centuries under Islamic rule in North Africa and Southwest Asia. Here, among fifty million Moslems, dwell almost 850,000 Jews. And the largest single Jewish community in this vast area, which stretches from the Atlantic Ocean, along the southern Mediterranean shore and across Asia Minor to the Caspian Sea, is that in Morocco, where there are more than 200,000 Jews.

Crushing poverty, the lack of the most basic human rights and sub-human living conditions were the fate of most of Moroccan Jewry for centuries. Even today, after forty years of improvement under the French, the Jews do not enjoy the privileges and advantages, for example, enjoyed by 300,000 Europeans. Nor do they have the rights, the security and the feeling of belonging enjoyed by some eight million Moslems—Berbers and Arabs—who are the subjects of the Sultan. The Jews, about 2.5 per cent of the total population, are at the bottom of the political, social and economic ladder. They, too, are subjects of the Sultan, but for them this status is a liability, not an asset. There is a small Jewish elite which is completely emancipated and lives under excellent conditions, but these people are the exceptional few.

Today, however, there are the beginnings of a new ferment in Jewish life in Morocco. Always, there has been a deep attachment to traditional Judaism, an attachment which still governs the Moroccan Jews' daily way of life. But, recently, there has also been the strengthening of ties with Israel and with other Jewish communities. There has been the cumulative effect of almost a century of educational and other aid by the Alliance Israelite Universelle of France. There have been the changes wrought by Jewish organizations like the American Joint Distribution Committee, the Organization for Rehabilitation and Training (ORT) and the World Union for the Protection of the Health of Jews (OSE), which have been administering aid in health, vocational training and relief during recent years.

The basic situation of Moroccan Jewry and the changes going on there

now cannot be easily described. Morocco is a land where social, political, cultural and religious elements are all tightly bound up in a seamless web because of the theocratic nature of the Moroccan state; and all these elements are mutually interacting. Thus, in Morocco, to wash a Jewish child's body and give him clean clothing is virtually to invest him with a new social status. To give a man the rudiments of an education is to give him the possibility of a powerful economic lever. This is an area where Jewish progress depends upon the interplay of such factors as rising Arab nationalism and French government policies, and upon adjusting to an environment in which institutions of Biblical times persist alongside a raucous, unripe brand of modernism.

Despite these obstacles, however, and despite conditions of housing, sanitation and health which, for the most part, are immeasurably worse than the most abject misery to be found in Europe or America, this much is clear: there are more than the beginnings of a regeneration among the masses of Jews, who for centuries have been isolated from the rest of the world. In particular, there is a growing movement among the Jewish youth of Morocco to integrate themselves into modern Jewish and European culture. Given the coordinated, far-sighted and large-hearted support of Jewish communities elsewhere, Moroccan Jewry can be transformed into one of the great reservoirs for Jewish life, both in their native land and in Israel.

### ***The Jewish Community***

The Jews of Morocco are of diverse origins. The oldest group were the ancient Berber tribes converted to Judaism at the end of the Roman era and during Byzantine rule, that is, from the third to the sixth centuries A.D. Another group were refugees from Palestine after the Temple of Jerusalem was destroyed in the first century A.D. These earlier inhabitants, Berbers and Palestinians, settled in the small towns of central and southern Morocco, in the oases and mountain villages. The most recent emigrants to Morocco came from Spain in the fifteenth and sixteenth centuries. They settled mainly in the large cities in northern Morocco. Their descendants in the seventeenth and eighteenth centuries established important businesses and maintained commercial relations with traders in all parts of the world.

It is estimated that of the present Jewish population of Morocco about 45 per cent are of Arab-Berber origin, 13 per cent Hebrew-Aramaic, 17 per cent Latin (Spanish, Portuguese, Italian) and 4 per cent German. Over the centuries these immigrants have intermixed with the indigenous Moroccan

Jews, a union made complete by the educational and cultural work of the Alliance Israelite Universelle.

Most of the Jews live in Mellahs, the ghettos of Morocco. About 75 per cent of them live in urban areas, and about a third, or 80,000, live in Casablanca, Morocco's most important city. While they comprise only 2.5 per cent of the total population of the country, the Jews constitute 9 per cent of all urban dwellers and 11 per cent of all Moroccans living in large cities.

The Jewish Mellahs, as the accompanying table shows, have the greatest population density of all areas in Morocco. In Sefrou, for example, the citywide population per square kilometer (an area about two-fifths the size of a square mile) is 5,865; in the Moslem neighborhoods there are 112,439 persons per square kilometer, but in the Jewish Mellahs the rate of occupancy is 415,815 persons per square kilometer. This population density is far greater than that of the most densely populated areas in the United States or other Western countries; besides, densely-populated areas in the West have far superior facilities for the accommodation of large numbers of people in relatively small areas.

#### *Number of Inhabitants Per Square Kilometer*

Name of City	Citywide	Moslem Areas	Jewish Mellahs
Sefrou	5,865	112,439	415,815
Casablanca	5,993	92,336	215,095
Marrakech	5,811	unknown	128,475
Fez	13,955	unknown	110,318
Rabat	4,139	unknown	94,432
Mogador	31,451	unknown	62,222
Sale	1,928	unknown	52,440
Meknes	16,509	unknown	41,330

In Casablanca 50,000 Jews live in the European neighborhoods, but the city's remaining 30,000 Jews are crowded into a small area of crumbling houses bordering on narrow passageways where light and air rarely penetrate. The interiors of the houses are usually so dark that any one entering from the light of day is unable to see anything for the first few minutes. Only the very best of them—one in twenty—show signs of order. Large families are the rule, and the six or seven bunks of various sizes, depending on the age of the children, may be arranged as a border to the four walls, with the overflow as centerpieces. Even these 5 per cent or so of the dwellings which may be described as "clean" cannot escape the pervasive stench of excrement, garbage and other nameless filth. Typically, the interiors are a disorderly melange of verminous rags that serve as beds, indistinguishable

mounds of dirt, a common uncovered pot of food and a slop-pail half filled with a cloudy liquid with constitutes the water for cooking, drinking and, theoretically, washing. Since water is obtainable only from wells controlled by Arabs who demand payment for every can, it is much too precious to be wasted on mere cleanliness.

This habitat teems with life. Ragged, barefooted, filthy children wander about or simply sit and watch the world go by. At least half of them suffer from favus (parech), a scalp infection characterized by running sores, or show the scarred remnants of past attacks. The ugly eruptions of tuberculosis of the skin are frequently seen, and trachoma in various stages from runny eyes to near or complete blindness is everywhere. Very few inhabitants escape pulmonary or some other form of tuberculosis during their lifetime.

What is true of the Casablanca Mellah is likewise true of the Mellahs of the other cities. It should be added, however, that some inhabitants of the Mellah have managed by energy and ingenuity to raise themselves to higher economic levels and some of them even managed to get out of the Mellah and to live in the European quarters of the cities.

### ***Numbers and Occupations***

At present about a third of all Moroccan Jews are gainfully employed. In view of the high proportion of Jews under fifteen years of age, 338 per 1000, it is apparent that there is considerable child and female labor among Moroccan Jews. About one-fourth of the Moslems are gainfully employed. Since 1936, the proportion of the gainfully employed persons among the Jews has been increasing at a much faster rate than that among the Moslems.

Before France became the protecting power in 1912, the role of the Jews in economic life was conditioned by their political subjection. Because of the danger to their lives and property, they followed callings which required no fixed locale and which permitted the accumulation of wealth in its most mobile form, money. They became money-changers, traders or artisans, entered the liberal professions as well and were attracted to fields, such as import and export trade, which the Moslems neglected. By their activities the Jews put Morocco in touch with the whole world.

Today, although the Jews are no longer subject to the economic restrictions of the pre-French period, their occupational patterns reflect the centuries of restriction. Thus, their exclusion from land ownership and public service, as well as their urban character, are still strikingly apparent. In 1947, 47 per cent of the Moroccan Jews were in commerce, 36 per cent in industry, 4

per cent in the liberal professions and public service, 10 per cent in domestic service and only 4 per cent in fisheries, forestry and agriculture. On the other hand, though they make up only 2.5 per cent of the total Moroccan population, Jews comprise 17 per cent of the people in commerce, 7 per cent of those in industry, 8 per cent in the liberal professions and public service and 5 per cent in domestic service.

Most of the Jewish artisans are jewelers, leather craftsmen, textile and fur workers and rope-makers. They, and many of the Jews included under commerce or industry, really constitute the Jewish proletariat of Morocco. Almost half of the Jews counted in these two latter categories are employees, and most of the self-employed Jews own little more than their skill and a small stock of goods. In public service the Jews fill only minor positions as office boys, copyists and clerks.

### ***The Jews Under Islamic Law***

The status of the Jews of Morocco is defined by Islamic law as developed from the seventh to the eleventh century of modern times. Islamic law, which still prevails in Morocco to a greater extent than in other Arab-Moslem lands, has determined not only the legal status of Jews and other non-Moslems but also their dress, abode and, at times, even their beliefs.

Mohammed, the Messenger of Allah and the prophet who brought monotheistic Islam to the Arabs more than thirteen hundred years ago, at first was friendly to the Jews; he considered them especially promising and valuable for conversion. Disappointed by his failure to convert them, Mohammed later showed an ambivalent attitude toward them. While borrowing heavily from Judaism (and from Christianity as well) and praising the Jews as "people of the Book," Mohammed also accused them of base crimes and egotism, and attacked them as defamers, desecrators and falsifiers of the Scriptures. Some of these attacks were included in the Koran, the Moslems' Holy Book, which gave them the force of law and had juridical consequences harmful to the Jews.

The Koran distinguishes between believers in Islam and infidels. Jews and Christians, however, as "people of the Book" and receivers of some form of divine revelation, were placed between these two groups. During Arab-Moslem conquests in Asia, Africa and Europe, the "people of the Book" escaped the awful fate of other non-Moslems who, if they refused conversion, were either exterminated or enslaved. Jews and Christians were tolerated under Islamic rule and were permitted to practice their own religions with

certain restrictions. Their status was defined as that of "dhimmi," a person protected by covenant.

"Dhimmi" status, codified in the eleventh century, conferred rights and imposed restrictions upon Jews and Christians. There were six essential duties and six others less binding.

The duties which were binding upon the protected non-Moslems, or "dhimmis," forbade them to: 1) use the Koran with contempt or to falsify its text; 2) speak of Mohammed in false or derogatory terms; 3) speak of Islam irreverently; 4) touch a Moslem woman even in marriage (which was itself forbidden between Moslems and dhimmis); 5) try to divert a Moslem from Islam and to threaten his life or possessions; 6) aid an enemy of Islam and shelter spies.

Transgression of a single one of these rules meant the withdrawal of protection and made capital punishment possible. Even today a Jew is held to desecrate the Koran by touching it, nor may he say the name of Allah or Mohammed or enter an area peopled by fanatic believers.

The six minor rules, transgression of which subjected one to fines and other penalties but did not mean loss of protected status, required dhimmis to: 1) wear distinctive clothing with a circular symbol on the shoulder, yellow for Jews and blue for Christians; 2) refrain from building structures taller than those of Moslems—a synagogue, for example, could not be built higher than the minarets of the mosques; 3) refrain from sounding their bells and trumpets in Moslem towns and reading aloud their books and prayers; 4) refrain from drinking wine in public, and Christians must not display the crucifix or raise their pigs in public; 5) bury their dead in silence, without loud cries; 6) refrain from using horses of noble or other breed—they might use only mules and donkeys.

While some of the features of this code have fallen into disuse with the passing of the centuries, it is still official doctrine and in part still governs the conduct of Jews and Christians in Moslem lands.

The real property of Jews, subject to several strict limitations, constituted a "waqf," that is, property belonging to the entire Moslem community. Jews, too, had to pay a double tax: a poll (or head) tax and a land tax. They were further taxed for the upkeep of the Moslem armies and had to pay a tribute of "friendship" as well. All of these special taxes were removed if the dhimmi became a Moslem. Jews could not carry arms or testify in court and suffered certain disabilities in private law.

Special legislation provided separate courts for Jews and Christians, but all cases involving a Moslem went to the Moslem courts. In their own

courts, however, the Jews were permitted to apply and develop the legal precepts of Judaism insofar as these did not conflict with Islamic law.

Such was the status and condition of the Jews under the law of Islam. This body of law was applied with varying degrees of rigidity; wherever fair and peaceful relations existed between Jews and Moslems, it was always by the grace of the latter rather than because of the rights of the former. This legal system has been largely superseded by Western codes in much of the Islamic world, but in some areas, notably Morocco, it still applies with considerable strength, while everywhere in the Islamic world its vestiges remain to keep the Jew in an inferior position and to prevent the country's advancement.

### *The Jews Under the French Protectorate*

France opened Morocco to Western influence in 1912 without altering the foundation and structure of the Sultan's theocratic power. Actually, the Sultan's supremacy did not reach to all parts of the country, and the French helped him consolidate his reign and, in the process, brought Morocco peace from its intertribal warfare. Under the protectorate, the Sultan maintains his sovereignty in principle. In fact, while he is an absolute monarch in the religious domain, he shares his executive, legislative and judicial powers with the French. Laws, for example, are signed by the Sultan but are implemented by the Resident General, the highest French official in Morocco.

Since the establishment of the protectorate, a growing number of Moroccans, and especially the Jews, have turned toward the West. When the French entered Morocco, moreover, they found among the Jews many persons already oriented in that direction and specifically toward French culture, because of the efforts of the Alliance Israelite Universelle, an organization of French Jewry which has brought the French language and civilization to Moroccan Jews since 1862.

Under the protectorate of France, Moroccan Jews have constantly improved their position. As we shall see later in more detail, they previously enjoyed some legal protection of life and freedom of religion and property, but only by grace of the Sultan. For the most part they were kept in a grossly inferior status and often were boycotted and persecuted. The French eliminated the worst features of this status. They guaranteed to Jews the right to live where and as they please, the freedom of dress and movement, the right to own land outside the Mellah, exemption from special taxes imposed upon certain non-Moslems and protection from general persecution.

Today the condition of the Jews mirrors the profound social conflicts in contemporary Morocco. Although they have intermingled with the Arabs and Berbers for many centuries, and despite a certain superficial resemblance many of them bear to the Moslems in language and customs, the Jews have remained a distinctive group in Morocco. Now, because their traditions and aspirations make them peculiarly sensitive to the great Western currents there, they are more willing to separate themselves from the ancient order.

The French administration has improved the welfare and status of Moroccan Jews but, excessively cautious where Moslem institutions are affected, it has taken no official notice of one essential element: the fact that Jews are in an inferior position to Moslem subjects of the Sultan. As non-believers or "infidels" in an Islamic state, the Jews suffer from special disabilities of a legal and customary nature. They may not hold positions of authority in government. They are subject to discrimination in justice. A Jew accused of defaming the religion of Islam, for example, can never prove his innocence. The oath of his Moslem accuser is accepted in Sherifian (Islamic) courts, but the oath of the defending Jew has no legal standing. Not wanting to provoke the Moslems by disturbing their theocratic, authoritarian political system, however, the French have recognized no distinctions among the Sultan's subjects and have not modified the fundamental features of this discriminatory Sherifian public law.

Nor, except for permanent emigration, is there at present any way for the Jew to escape the inequities inherent in this situation. Along with other subjects of the Sultan, the Jew cannot renounce his Moroccan status and acquire other citizenship while in Morocco. And all Moroccans, of whatever religion, if they acquire new citizenship after living in another country, become subjects of the Sultan again if they return to Morocco.

For the Jew especially, then, life in Morocco is uncertain and psychologically disturbed. More Westernized and better educated, on the average, than his Moslem neighbor, he still finds himself considered and treated as his neighbor's inferior. He may at times be treated fairly, but this is always a Moslem boon to the Jew rather than the right of the Jew. Such a situation obviously cannot exist too long without generating considerable social pressure. The status of the Jew in Morocco, therefore, represents a challenge to the government of France to introduce long-needed changes. And the Sultan, by cooperating with efforts to bring equality of condition to all Moroccans, Moslem believers or not, could implement his frequent claims that he favors progressive reforms in his country.

## 2. THE JEWISH COMMUNITY AND ITS INSTITUTIONS

The dual influence of Islamic and French culture, which, as we shall see, colors so much of Moroccan Jewish life, is especially revealed in the structure of the Jewish community. The organized Jewish communities of Morocco have a history which goes back to the period before the Christian era, but we have little information about them until the fourteenth or fifteenth centuries. The arrival of the Spanish Jews, who were expelled from the Iberian peninsula in 1492, fixed community organization so firmly that its features persisted even under the French Protectorate.

The Sultans and their followers feared no religious contamination by these new arrivals from Spain, whose religion and customs were so different. The Moslems lived circumscribed lives, with little contact with the outside, and the Jews, on their part, showed no desire to influence the people near whom they settled. The Sultans did, however, see in the Jews ideal taxpayers; though they were not wealthy, they could be easily pressured. For this reason the Sultans did not limit the number of Jews who entered Morocco in flight from Western intolerance. The Sultans, instead, assigned them special quarters at the entrance to Arab towns, and the Jews could not leave these designated areas except to go to work. Thus was born the Mellah, the ghetto in which the Jews have lived for centuries in misery, sustained by a religion whose force created bonds strong enough to withstand the blows of poverty and contact with other faiths.

### *History and Organization*

In the Mellah the Jews were permitted to organize themselves relatively free from Moroccan supervision; they could practice their own religion and administer justice according to their own principles. The Sultan's authority was represented by an official called the "cayid of the Jews," who was charged with the collection of taxes. Cut off from the world, unable to buy land, living in closely-confined misery, the Jews of the Mellah became a separate enclave, a state within the Moroccan state. The poor were the charges of the rich, who supported the community's financial structure and used their influence with Moroccan authorities. The rich were at once the governors of the Mellah and the ambassadors to the Sultan.

Mellah administration was rather primitive and makeshift. Each community was run by the Council of Notables (the elders of the town designated by the community), who met whenever a special problem arose. The Council in turn appointed the head of the community, a rabbi. From among the

leading residents a treasurer was selected, usually a man with a reputation for morality and piety. His duties were to collect and administer the funds of the community; he solicited gifts in kind and distributed them among the poor at certain intervals. After the rabbi, the treasurer was the most important man in the Mellah. Thus the Council of Notables, the rabbi and the treasurer were the entire administrative apparatus of the Jewish community. The various Jewish communities had no connection with one another and there was no central body to coordinate their activities.

This was the organization of Jewish life in Morocco from the fourteenth century until 1918. Even the establishment of the French Protectorate in 1912 left this structure unaltered. Six years later, however, the Jewish community was given official juridical recognition in a decree which clearly set forth the powers and functions of their governing bodies, the Councils. These powers and functions have remained substantially the same ever since. The main function of the Council of a Jewish community is to administer aid to the poor and to manage holy property. The composition of the Council is likewise prescribed and includes the president of the Rabbinical court, the deputy rabbi and several leading persons selected by the Sultan's Grand Vizir (or Prime Minister) from a list presented by the Jewish community. The number of Council members varies from four to ten, depending upon the size of the community. Members serve for two years and may be reappointed. They choose their own officers, subject to approval by the Grand Vizir. Community funds continue to be raised by gifts, taxes on the sale of wine and meat, and the income from holy property where there is any. The budget is also subject to approval by the French administration and by the Grand Vizir.

A year after the Councils' functions were outlined in 1918, a decree of the Moroccan government created the office of Inspector of Jewish Institutions, primarily to supervise finances; other functions were later added. Attached to the Moroccan Bureau of Sherifian Affairs, the Inspector served as adviser on all matters pertaining to the administration of the Jewish communities. The subsequent expansion of the Councils' activities and the growth of the Rabbinical courts led to a reorganization of this office. A Moroccan decree of 1944 charged the Inspector with the duty of advising on all specifically Jewish affairs of a political, cultural and religious nature. He exercises his functions in the communities and the Rabbinical courts during tours lasting several days. He makes a monthly examination of the status of court cases, sets the time allowed for appeals to the Supreme Rabbinical Court, and controls the communities' budgets and their yearly business

accounts. He also advises on all matters relating to the property of the communities: gifts, mortgages, cessions, exchanges and litigations. His influence is thus considerable and is growing. This office can play an important part in facilitating the evolution of the Jewish community toward Western ways and in adapting its legal and administrative machinery to this progressive change.

In 1931, a decree endowed the Councils of the Jewish communities with legal personality, without which they had been unable, in effect, to manage property or to bring an action in court. Despite this enlargement of function, however, the approval of the Sultan's Grand Vizir (advised by the Inspector of Jewish Institutions) is still required for the most important property transactions: acquisition, sale, mortgage, cession and exchange. This decree revealed the government's general attitude toward the Jews: it wanted to supervise their activities closely, but it wanted also to help them.

After the fixing of their powers by the decrees of 1918 and 1931, the Councils of the Jewish communities fell into apathy because of the limitations put upon them. Juridically, the Councils were only charity boards, although in practice they were the representative body of the Jews of the Mellah. The government called upon the Councils not only to transmit official instructions, but also to attend official receptions as the representatives of the Jews. With such a wide gap between their legal powers and their practical functions, the leaders of the Councils had to act with tact and ability. Obligated to make decisions in a variety of situations, they might at any moment see their decisions voided by a hostile administration always able to invoke the controls in the decrees of 1918 and 1931.

These developments under the French Residency lowered the status of the Jewish communities, reduced the effectiveness of the Councils and induced apathy because of inactivity and a feeling of lack of responsibility. Following several complaints by the Jewish communities, a decree of May, 1945 again reorganized the Councils. It gave them, in addition to their existing functions of aiding the poor and managing holy property, the power to supervise religious affairs in general, and to advise and suggest plans to the government on all matters of interest to the Jews. The decree merely legalized a state of fact, but it also gave legal sanction to all the actions which the Councils had undertaken. It was important for the Councils to have this legal recognition to support its work.

This 1945 decree also provided for the election of the Councils by secret ballot. The number of persons elected, however, is nearly twice the number needed to serve on the Councils. The government selects the Council members

from these panels, acting under the provisions of the 1918 decree, which is still valid. In the view of the Jewish communities, it is regrettable that the government still retains this right even if it invokes it only upon rare occasions (as in the election of certain members to the Council of Fez in 1950).

There are several other shortcomings in the method of selecting the Councils of the communities. The persons for whom the members of the communities may vote are usually local notables who contribute to the welfare funds, administrators of the synagogues and officers of the local Jewish organizations which are legally recognized. The electorate, further, does not always include the entire Jewish community. Moreover, only Jews who are Moroccan subjects may vote, thus excluding advanced foreign Jews who could raise the general cultural and political level of the communities. An even more serious shortcoming, of course, is the one already referred to, the power of the Grand Vizir to designate the Council members from the larger list of candidates elected by the community.

### ***The Communities Council and the General Assembly***

Another change made by the decree of May, 1945, created a Communities Council, a permanent organization designed to coordinate the activities of the various Jewish communities in Morocco. The presidents of those towns which were elevated to the status of municipalities were authorized to meet annually in a General Assembly in the city of Rabat, under the control and chairmanship of an official in the Department of Sherifian Affairs. These reforms were an important, if limited, advance in community organization; they established a permanent bond among all the Jewish communities and gave their coordinating committee official recognition.

In March, 1948, the General Assembly held its second annual meeting at Rabat, attended by forty-five representatives from the Councils of all municipalities. Five reports were discussed in the two-day session: the status of the Communities Council itself, budget, housing, education and health. The Assembly reaffirmed its decision of the previous year on these matters; it stressed the same points again in 1949 and 1950. Although the purpose and functions of the Communities Council are not clearly defined, the government recognizes it as the representative organ of Moroccan Jewry, and this gives the Council a great potential role as an instrument for liberation.

### ***Central Council of Jewish Communities***

The decree of May, 1945, which created the General Assembly of the Jewish Communities, led to the spontaneous establishment of the Central

Council of the Jewish Communities. This important body, while not based explicitly upon a decree, has been officially recognized by the Department of Sherifian Affairs. A recent administrative ruling defined the Central Council as the permanent coordinating body of the various Moroccan Jewish community councils, with headquarters at Rabat.

Unlike the General Assembly, which meets annually, the Central Council is a kind of executive committee for all the local Councils, and performs four main functions: 1) assures liaison between the individual local Councils and the government authorities, 2) studies problems common to all the local Councils, 3) unifies their varying viewpoints and 4) makes available for the common good the experience of each of the local Councils.

The Central Council, which is a tribute to those persons who have built it up, ought to be fully sanctioned by a decree, which would guarantee its independent existence and enable it better to serve the general welfare.

### ***Recommendations***

There are several immediate reforms which would strengthen the Jewish communities and their representative bodies.

First, the electorate ought to be widened to include all Jews with a certain minimum of education. This would be a first step toward complete democratization. Second, the more Westernized Jews, Algerians and Frenchmen, should be permitted to help the Councils. Third, financial matters ought to be reviewed since it is clear now that the task of aiding the indigent is too great to be accomplished without government assistance.

By this time Moroccan Jews have progressed sufficiently to permit the removal of governmental controls over their communities. They have shown themselves to be politically mature enough to elect their own representatives, to enlarge the electorate and to give their own community Councils full responsibility for their budgets, to which the government, up to 1949, had not contributed a penny. In 1949, for the first time the government made a grant of seven and a half million francs for all the Jewish communities, an amount representing less than 10 per cent of their combined budget. This, of course, is far from adequate. Local estimates indicate the grant ought to cover half of the budget. The present system of control, moreover, produces myriad inconveniences. For example, a letter from a community Council sometimes takes weeks to go through all the echelons of the hierarchy before it arrives at its destination. The Council sends it to the office of the Municipality; from there it goes in turn to the Chief of the Region, the Department

of the Interior, the Advisor of the Sherifian Government, the Inspector of Jewish Institutions and finally to the Prime Minister. This procedure mirrors the inefficiency and the injustice of the whole structure which continues to govern the Jewish communities, despite the clear fact that they are well able to govern themselves.

Finally, the Central Council of the Jewish Communities ought to be sanctioned fully by a special decree.

### 3. PERSONAL STATUS IN THE JEWISH COMMUNITY

Under the Moslem system of religious autonomy for "the people of the Book," the personal status of Jews is governed by Rabbinical law which dates back to the time when the Jews first came to North Africa. France, upon assuming the Protectorate in 1912, did little to disturb this code and gave the Jews utmost freedom in the regulation of such personal matters as marriage, divorce and so on.

The law applied in the Jewish communities of Morocco is the Biblical-Rabbinical code as interpreted by the local Jewish courts and varying from place to place. This body of law derives from the Torah and the Talmud, the great codes which summarize Rabbinical legislation. It derives also from the interpretations given to these codes by the individual Moroccan rabbis. Over the centuries the Rabbinical judges have built up several collections of "She'elot" and "Teshuvot," that is, *responsa*, which are for the most part unpublished and unfortunately not deeply studied.

The study of the personal status of Moroccan Jews is made more difficult by the fact that not a single Rabbinical court publishes its decisions. If these courts were to do so it would not only facilitate the study of personal status but would also help considerably to unify the law.

There are two great legal traditions which apply to the Jewish communities of Morocco: Mosaic law in the cities of Marrakech, Safi, Mogador and in Southern Morocco; and Castilian law in Fez, Meknes, Rabat, Casablanca and in Northern Morocco, especially in Tangier and Spanish Morocco. For our purposes here it is not necessary to examine Rabbinical law in all of its details. As examples of its nature, however, we may consider Rabbinical law as it applies to questions of adulthood and majority, marriage and divorce, inheritance and the general status of women.

## ***Adulthood and Majority***

The Bible does not mention the legal age of adulthood for the Jew, but the Talmud holds that minority ends at the appearance of the first signs of puberty, thirteen years of age for boys and twelve years for girls. The father's right of guardianship over minor children is absolute; this right can not be taken from a father under any circumstances, and can be given to another person only in the event of the father's death. This rule, absolute as it is, presents few inconveniences in daily reality; it is rare to see a case of paternal disqualification among Jews. In contrast to this total power of the father, the mother is never the legal guardian of her children. When a father dies without having named his wife or another person as guardian, the judge names a solvent member of the family to that position to insure the protection of the child's property. The law on this point is fully observed; there is rarely a case of embezzlement of a minor's property.

The fixing of adulthood at such a low age, however, results, in inconveniences which are aggravated by the growing complexity of modern life. The Jewish community, of course, feels these inconveniences acutely. Recently, at the Second Annual Conference of the Chief Rabbis of Morocco, it was decided to fix the age of majority at twenty years for men and women. Although Jewish courts still retain the power to confer adulthood on minors under the age of twenty, this decision shows how Jewish Moroccan private law moves toward the norm of French law.

## ***Marriage and Divorce***

Marriage, according to Rabbinical law and the Talmud, is both a religious and a social duty, and as such it is the object of many safeguards. At their first meeting in 1947 the Chief Rabbis of Morocco included betrothal under Jewish legal arrangements in order to halt certain abuses which, it was felt, had a detrimental effect upon the institution of marriage. At present if an engagement is broken within six months through no fault of the woman, she is entitled to indemnification for the cost of the betrothal ceremony but must return any jewels she received as gifts. If the engagement is broken after six months, however, and the man is responsible, he must make a supplementary payment unless his action in breaking the engagement has the sanction of civil law. The defect in these arrangements is, of course, the difficulty of establishing responsibility in so personal and intimate an affair as an engagement for marriage.

In an effort to eliminate other abuses, the Chief Rabbis in 1947 also brought the Moroccan Jewish community under Biblico-Rabbinical law in cases of engagement followed by seduction of the woman. At present the pregnancy of a woman is enough to require the seducer to marry her. If he refuses or is already married, he must pay the woman a sum between 5,000 and 50,000 francs (from about \$14 to about \$145). If, however, he denies responsibility for the pregnancy, the Rabbinical court requires him to take an oath; if he maintains his position under oath, he must pay the woman a sum between 1,250 and 12,500 francs (from about \$4 to about \$35), depending upon whether or not he was actually living with the woman at the time of conception. While these rules seem primitive to us in the West, they are rather advanced for Morocco. Yet, of course, they fail to protect the woman since the man can never be required to accept the responsibility if he denies it, the payments are meager and no paternity test is administered.

Two other issues in this area of human relations are child marriages and polygamy. With regard to age at marriage, recent Moroccan Jewish law reflects both Moslem and Western influences. The Rabbinical courts have tried to prevent child marriages, but what is now needed is a formal regulation setting the minimum age for marriage at a few years beyond puberty. Polygamy, while permitted by law, is rare in practice. The Rabbinical courts seldom authorize a second wife unless a man's first wife has been sterile for more than ten years, but even cases of this kind are rare. To assure full protection to women, however, the legal code ought to be brought into harmony with current advanced practice.

Like other regulations of personal status, the rules governing divorce in Morocco grant men considerable freedom at the expense of the interests of women, who are made the victims of successive polygamy, and of the children, whose interests are hardly considered. The Rabbinical courts in North Africa, following one school of interpretation, have allowed the husband to be the only judge of the reasons for divorce, making it possible for him to end a marriage virtually at will. In 1947 the Chief Rabbis took steps to reduce the frequency of divorce and to give greater protection for the rights of married women, but these are only a beginning. The Rabbinical courts ought to be given the power to control divorce.

The effects of divorce upon the children are especially tragic, for they go with the father and his new wife. The divorced mother retains only those children whom she is still nursing, but when they reach six years of age their father may take them, and the mother has no legal defense against this

deprivation. The divorced woman thus loses her children, her home and household and her means of support.

These arrangements, of course, are intolerable in a forward-looking community oriented toward Western legal codes and practices. The Jewish community of Morocco is under a great obligation to reform its marriage and divorce procedures, and there is considerable pressure for such reform among the younger generations of both men and women.

### *Inheritance*

The inferior status of women is further revealed in the Moroccan Jewish community's regulations for inheritance. Here there are considerable differences between the Jews of Spanish descent and those who came to North Africa in earlier eras. Doubtless as a result of Christian influence, among the Jews of Spanish descent there was common property in marriage; in the event of the husband's death, half of the joint property would go to the widow and half to the heirs of the deceased.

Under Mosaic, Biblical law, however, the widow is excluded from inheriting property unless she is mentioned in the husband's will. If there is no will, the widow may claim a certain sum as set forth in the original marriage contract; beyond this she is entitled only to a food allowance, and this only so long as she does not remarry. Inheritance follows the male line, to sons; daughters inherit only where there are no sons or grandsons.

Several reforms are urgently required. The Chief Rabbis have proposed a new law of inheritance, under which the widow would be counted as an heir, sharing equally with the children of the deceased but receiving a minimum of one-sixth of the estate. Unmarried daughters of a deceased man would share equally with his sons, but daughters would get no share if married, widowed or divorced.

These proposals have been criticized as inadequate. Any reforms must take into account the younger generation's desire for equality between the sexes. The solution of the Moroccan Jewish community's problems of inheritance, therefore, lies in the adoption of Western concepts rather than in the patching up of a discriminatory tradition.

### *Status of Women*

The respect accorded women in Jewish tradition, as registered in the Bible, the Talmud and the better practices of the rabbis, is thus contradicted

in some features of Moroccan Jewish life. Women there are crushed by a system of inheritance which sanctifies their debasement; they see themselves repudiated, deprived of their children, divorced, widowed, excluded from inheriting even from their own parents. Such a situation is contrary to the moral and religious requirements of Judaism itself, which give unexampled dignity to women.

The laws fixing the status of Jewish women in Morocco are those of an ancient civilization. At the time they were first promulgated, they were an advance over the conditions in Oriental societies. Biblico-Rabbinical laws on inheritance, for example, modified the rigors of a strictly agnatic (descent in the male line) system. The Islamic influence, so profound in Morocco, prevented the full realization of such improvements in the legal status of women. Men suffered equally from the degraded status of women. The usual concomitants of this subjection are broken homes with children left adrift, early separation which debases a man's existence at the same time makes a woman's insecure, general insecurity of the wife too often enslaved and too often rejected, and instability of the family. The Moroccan Jews, however, are ready to repudiate these evils, just as the Jews of the West did centuries ago.

The younger generations among the Jews of Morocco adopt, wherever possible, the Western way of life and reject these anachronisms. The women educated in the schools of the Alliance Israelite Universelle, for example, are in effect emancipated. They have acquired a skill which enables them to hold a job, and they have become oriented to Western ways. About 40 per cent of all pupils in Alliance schools in Morocco are girls. In school they absorb both Jewish and Western traditions, but when they are graduated they must somehow survive the shock of returning to the limited life of the Mellah, subject to all the conditions of inferiority which their education has taught them to reject.

A solution to this problem must be found if for no other reason than to avoid a widening of the gap between the generations. Traditionalists in the Jewish community resist the movement for reform. The example of Algeria, however, shows that this resistance is at some points little more than formal, with not much profundity of feeling behind it. In 1870, Algeria appeared to be no less attached to ancient customs regarding personal status, yet the Cremieux decree and French civil law, once promulgated, were quickly accepted.

With regard to reform in Morocco, we must distinguish the religious realm from the secular. In Biblical times and for centuries thereafter in

some places, this distinction was not made, but in our time personal status is a civil matter. Throughout the world only about 5 per cent of the Jews live under an archaic regime in which personal status is governed by religious law. This indicates that it is not really a religious issue any more among Jews. Rather, personal status is now a technical, legal matter and to conceive it in any other way is to confuse the religious and secular domains.

### ***Conclusions and Recommendations***

The goal, then, is clear: to accord women full juridical status and rights and to bring the rules of Jewish personal status in Morocco nearer to those of modern law. This goal can be achieved in part within the Moroccan "*Takanot*" system (legislation of the Jewish community). The most serious inconveniences can be discouraged by granting to women the right of guardianship over their children and a food allowance in cases of arbitrary abandonment. Thus there are great possibilities for reform which can be realized by the system of *Takanot* itself.

It is equally important, however, to institute certain other reforms. The Rabbinical court judges, of whom we shall hear more in Chapter Five, ought to be raised in status and given general cultural training. The Institute of Higher Hebrew Studies, opened in 1951, will now perform this task. Another possible strong influence for reform is the Office of Inspection of Jewish Institutions, whose functions and powers can be so enlarged as to enable it better to direct the evolution of the Moroccan Jewish community. Closer control over the Rabbinical courts would assure unification of the administration of justice. These reforms are essential for the immediate improvement of Moroccan Jewry's position. They will, further, have incalculable repercussions on the whole of Moroccan society if they are undertaken with the courage which the misery of most of Moroccan Jewry should inspire in those who can help.

So much for the reform possibilities within the framework of the Jewish community legislation (*Takanot*) and the government of the Protectorate (Office of Inspection of Jewish Institutions). Within the framework of the treaties which now govern the Protectorate it is possible, also, to permit Jews who prefer a change to relinquish totally or partially their rights under the existing system of personal status and to adopt, temporarily or permanently, French civil status.

Despite these various levels on which reform in personal status can be instituted, the essential and immediate tasks can be accomplished by the

*Takanot.* Beyond these reforms, guarantees of greater justice can come from new legislation recognizing the equality of male and female, and from a more advanced judicial system better adapted to the changing status of the Jews in Morocco.

#### 4. MOROCCAN CITIZENSHIP AND NATIONALITY

We have thus far reviewed in some detail the history and organization of the Jewish community in French Morocco and the important features of Jewish personal status there. We saw that three forces which have shaped these communal institutions: Biblical law and ancient Jewish custom, Islamic rule and French influence in this century. We now turn to a description of the Jew as a Moroccan in Moroccan society.

The problems of Moroccan citizenship, which concern the Moslems as well as the Jews, are the key to the inferior legal status of the Jews. These problems, complicated by the application of both Western and Islamic legal principles, can be understood only after a glance into their history. How did it come about that the Jews can neither rise to full Moroccan citizenship nor obtain other citizenship while still living in or returning to Morocco?

Morocco was at first not a distinct state but an outpost of the Islamic empire subject to the authority of the Caliph, the religious and secular head of all Islam. It soon became independent, however, and maintained its independence for centuries during which the Moroccan Sultan was the absolute ruler. This political change did not mean abandonment of Koranic law, which continued as the basic law for Morocco. Merely being a Moslem gave a Moroccan full rights as a subject of the Sultan, while non-Moslems had neither rights nor duties in the Moroccan community. At this time the Jews were not subjects of the Sultan, but they were tolerated and protected because of their special usefulness and the heavy taxes they paid.

When the European powers became established in Morocco in the nineteenth century, some Jews placed themselves under their protection as employees and representatives. At first the Sultan did not object to this practice, but when it was questioned by a British diplomat in 1877 and led to diminishing tax returns, the Sultan protested against it and claimed the Jews as his subjects. At an international conference in Madrid in 1879 the whole question of European influence in Morocco was considered. The Madrid Convention, signed by all the great powers, established the principle of perpetual allegiance, according to which no Moroccan subject who acquires new citizen-

ship can maintain it if he returns to Morocco. This rule has been especially hard on Jews. Even the French would not alter it. While it might have been in the interest of the French to grant citizenship to certain Moroccans, the French did not do so because they feared that such a policy might expose them to the charge of overstepping the bounds of their rights as the protecting power.

At present there is no definitive rule of Moroccan citizenship. The only statute on this subject is a decree of November, 1921, which deals merely with the temporary acquisition of Moroccan citizenship as a means to the acquisition of French citizenship. The essential principles of the Moroccan law of citizenship developed later by slow changes in interpretation. One direction of this change was toward the modern conception of nationality or citizenship according to place of birth, but this was only a minor influence. The major influence followed the older conception of nationality or citizenship determined by that of the parents rather than by place of birth. Thus one is considered a Moroccan, regardless of birthplace, if one's parents are considered Moroccans. Citizenship in Morocco is acquired neither by legal naturalization nor by marriage.

Just as a person cannot become a Moroccan citizen unless he is born one, so it is not possible, according to the principle of perpetual allegiance, for a Moroccan citizen to relinquish this status definitively and finally. With the growth of the liberal, secular state, this principle has all but completely disappeared in the West.

In applying the principle, the French courts in Morocco have always denied the validity of non-Moroccan citizenship obtained by emigration and without the Sultan's consent. A native Moroccan who acquires other citizenship by emigration is, upon his return to that country, considered a Moroccan citizen by the Sultan and by all the powers which signed the Madrid Convention of 1879. Thus a native Moroccan is barred from becoming a citizen of another country unless the Sultan consents; this the Sultan has not yet done in a single known case. Despite certain minor exceptions, then, the principle of perpetual allegiance prevails: a native Moroccan on Moroccan soil is always a Moroccan national.

The principle, however, does not always apply uniformly and without difficulties. If only one of the parents is a Moroccan, or if there is a conflict between Moroccan law and that of another country, including France, the French courts have jurisdiction. Generally, however, these courts apply the principle of perpetual allegiance, thus strengthening it. Whereas French law usually supersedes Moroccan law in a conflict, Article 15 of the Madrid Con-

vention limits this superiority in questions of citizenship. Thus, a native Moroccan who emigrates to another country and acquires citizenship there will, upon his return to Morocco, be considered by the French courts to be a Moroccan national after a certain length of time. This obligation to apply the principle of perpetual allegiance is imposed upon France not by laws of Morocco but by virtue of its being a signatory of the Madrid Convention.

Certain typical disputes affecting the status of Moroccan Jews and other Moroccans are usually settled in a way unfavorable to the possibility of acquiring non-Moroccan citizenship. Following are some examples:

1. A child born in France of Moroccan parents is considered a Moroccan until he reaches majority, at which time, according to a French law of 1945, he may acquire French citizenship. Of course, should he return to Morocco, he would, under Article 15 of the Madrid Convention, become a Moroccan national again after residing there for a period of time equal to that which was necessary to acquire French citizenship.

2. A child born in Spain of Moroccan parents may likewise, under Spanish law, become a Spanish citizen upon reaching majority. Spanish citizenship acquired in this way, however, is not recognized by the French courts in Morocco.

3. A child born to a Moroccan father and a French or other non-Moroccan mother is considered a Moroccan national. This is contrary to the citizenship code of France, which provides that a child born of a French mother is always French. A French decree of October, 1948, altered this situation by ruling that a child born of a Moroccan father and a French mother may acquire French citizenship with the Sultan's permission.

The Moslems and Jews of Morocco are equals in their subjection to the principle of perpetual allegiance; neither can escape Moroccan status. All Moroccans, therefore, would benefit from modification of the principle, but the Jews have the most to gain because they are not merely prevented from acquiring other citizenship but do not have all the rights which Moslem Moroccans have.

Despite its apparent rigidity, the principle of perpetual allegiance reveals certain gaps which permit a more liberal interpretation than is usually given to it. The mixed court of Tangier, for example, has held that the principle of perpetual allegiance does not necessarily follow from Article 15 of the Madrid Convention, and that this article makes foreign citizenship invalid only where the Moroccan has left the country to acquire it. If, on the other hand, a Moroccan acquires other citizenship without leaving Moroccan soil, Article 15 does not apply and, in the absence of other laws on the matter, the

new citizenship is valid. Thus the appellate division of the court of Tangier held in March, 1949, that a Moroccan Jew, naturalized as a Spaniard by a royal decree while he was still on Moroccan soil, had acquired his Spanish citizenship validly. Such an interpretation is in strict conformity with the Madrid Convention. It has frequently occurred in French jurisprudence that a loosely-worded law is interpreted in one way for a time and is then given a new interpretation. Nothing, therefore, would bar the French courts from following the example of the mixed court of Tangier and to hold that a former Moroccan may retain his acquired French citizenship even if he remains in or returns to Morocco, unless the Sultan opposes it. In this way the present situation would be improved. Instead of requiring the Sultan's *approval* for the acquisition of new citizenship, this interpretation would permit the granting of French citizenship to Moroccan nations unless the Sultan *disapproved*. Such an interpretation by the courts would enable the French government to provide for the acquisition of French citizenship by Moroccans, including Moroccan Jews, who have shown their attachment to France either through service to that country or by their adoption of its culture. In 1923, France instituted such an arrangement in Tunisia.

If the narrow view of the Madrid Convention is still considered a barrier, however, there is yet another solution to the problem of perpetual allegiance. In effect, Article 15 of the Convention provides that a Moroccan may change his citizenship merely with the consent of the Sultan. It is therefore possible that a "dahir" (or decree) and an edict may be issued simultaneously by the Sultan and the French government, the dahir to define the cases in which a Moroccan may renounce his Moroccan status and the edict to establish the conditions for the acquisition of French citizenship.

Clearly, then, there are legal ways to modernize Morocco's primitive and discriminatory system of perpetual allegiance despite the apparent restrictions of the Madrid Convention. Whether these ways will be used, therefore, is now really a political rather than a legalistic question.

## 5. THE JUDICIAL SYSTEM OF MOROCCO

At first glance the judicial system in Morocco seems extraordinarily complex because of the existence of three types of courts with separate jurisdictions. The Rabbinical courts have jurisdiction over cases involving Moroccan Jews in matters of (a) personal status and succession—for example, marriage and family relations, wills, legacies and so on, and (b) religion—

for example, administration of sacred property and the synagogues. The native Moroccan Moslem courts handle civil and commercial cases in which all the parties are Moroccans, Moslem or Jewish. The French courts handle civil and commercial cases involving Frenchmen and persons under the jurisdiction of France or of certain other foreign powers. Within these broad distinctions arise many questions of detail which we shall consider later.

Because of the existence of several judicial systems, one cannot understand Moroccan justice without examining the principles which governed its establishment and growth. But this apparently complex system is rather simple in one respect: it unfailingly discriminates against the Moroccan Jews.

For the Moslem, Allah is one, his representative on earth, Mohammed, is one, and the law is one. There is no distinction between religious and secular obligations; Koranic law is essentially religious. According to the Koran, Moslems must be judged by a Moslem court applying the canonic law of Islam, while the Jews must be judged in Rabbinical courts applying Mosaic law. The Jews, as "dhimmis" and "people of the Book," enjoy this special privilege. To understand the present three-fold system of Rabbinical, Maghzen and French courts, we must first look at the Rabbinical and Maghzen courts before the establishment of the French courts in 1913, a year after the beginning of the Protectorate.

### *Moroccan Justice Before the Protectorate*

Before the French Protectorate, the Rabbinical courts were each composed of three Rabbinical judges. They had jurisdiction over religious matters and private, civil and commercial law as well, in cases involving Moroccan Jews. These courts could handle cases in which the parties were non-Moroccan Jews if the latter consented, but they could in no circumstance rule in a case involving a Moslem. Despite certain shortcomings, the Rabbinical courts in general rendered justice well for the Jewish communities. They had, however, no regular procedure and many rabbis judged merely on the basis of their personal authority. Their rulings, as a consequence, never had finality and were subject to endless appeals; litigants could take their cases from one rabbi to another indefinitely.

Moslem courts before the Protectorate had jurisdiction over all kinds of cases in which one Moroccan Moslem was involved with another or with a Moroccan Jew. The "cadis" or judges, highly respected persons at one time appointed directly by the Sultan, applied the law of the Koran. Their courts, too, had several shortcomings. Their rulings, as those of the Rabbinical

judges, were subject to endless appeals and consequently had no finality. Often the *cadi* was an ignorant man who, receiving no payment for his service, ruled according to the size of the gifts he received from litigants. Procedure was long, often complicated and subject to infinite postponement. The beginnings of the present system of Moslem justice are to be found in certain customary practices of litigants who, in cases not directly involving religion, went to representatives of the government, called "*cayids*," who could judge cases only according to well-established principles but could neither state nor interpret the law. The *cayids* settled cases more rapidly, but their rulings were often arbitrary.

Under this dual judicial arrangement the Jews in principle had the same rights as Moslems, but in fact they were inferior subjects of the Sultan. The Jews could seldom realize their theoretical rights. In Moslem law, for example, the primary means of proof is the oath and testimony. In the Moslem courts the oath of a Moslem had validity but the oath of a Jew, a non-believer, had no standing and his testimony was accordingly seldom admitted.

### ***The French Reforms***

The treaty establishing the Protectorate in 1912 gave France the opportunity to create *Moroccan* rather than *Moslem* institutions, but France failed to take full advantage of the opportunity and instead retained the original character of the Islamic legal order. The aim of France was to improve, but not to replace, the Moslem political patterns. Despite important reforms, however, France failed to go to the core of the problem and hence perpetuated certain injustices.

France's basic error with respect to the Moroccan judicial system lay in not closely examining all the courts. The French, finding courts dealing with Moslem and with Jewish religious law, on the one hand, and the seemingly secular Moroccan "*Maghzen*" courts on the other, concluded that this dual system represented the administration of purely religious law and purely secular law. It was apparently not realized that the *Maghzen* courts applied Koranic religious law uniformly. Thus, what appeared as a dual system of religious and secular justice was not that at all. Acting on this misinterpretation, the French formalized Moroccan justice by recognizing (1) the *Maghzen* courts as the secular system with jurisdiction over all cases involving Moroccans of all religions, (2) the Moslem courts as having jurisdiction in religious litigation among Moslems and (3) the Rabbinical courts as having jurisdiction in religious litigation among Jews.

By this arrangement the French administration thought it had established a just balance among the different religions, whereas it had only given juridical form to a discriminatory situation which had lacked legal justification. A more detailed look at this system will show the reality of justice in Morocco. We shall discuss the organization of the various courts in which a Jew may be involved in a case and we shall see how the law is observed and what reforms are needed.

### *The Rabbinical Courts Today*

As a result of French reforms, there are three levels of Rabbinical courts in Morocco. There are seven courts of first resort, each composed of three rabbis assisted by a clerk. To aid in the settlement of cases on this level there are twelve deputy Rabbinical judges who function in the areas where there is no regular court. These deputy judges, who hold court in their own homes and have no clerical assistance, may handle only those cases brought to them voluntarily; they also supervise the drawing up of documents by notaries.

The Rabbinical courts of second degree, like those on the lower level, are each composed of three judges and a clerk. The judges are appointed by the Moroccan administration, under French supervision, on the basis of a written examination in Mosaic law and an oral examination on private law. These examinations are conducted by the Supreme Rabbinical Court under the supervision of the Inspector of Jewish Institutions, an official (usually Jewish) of the Moroccan government. Neither of the examinations touches on matters of general culture, which explains why the Rabbinical judges, like their Moslem counterparts, know no French. As a consequence, these judges are becoming more and more alienated from the most progressive elements in Morocco, which are increasingly integrated into French civilization and habits of thought. It is urgent that the newly established Institute of Higher Hebrew Studies train Rabbinical judges in Western culture as well as in Mosaic law.

In 1918, the Supreme Rabbinical Court was established as an appellate division. At the same time, the French reorganized the internal procedure of the courts of first resort, requiring the clerks to record decisions in chronological order, assigning attendants to maintain order in the court and transmit documents, regulating the work of notaries, and fixing the forms of legal documents.

Remuneration of the Rabbinical judges is meager. In the lower courts the judges receive monthly salaries ranging from 23,000 francs (about \$65)

to 32,800 francs (about \$93), while the three judges of the Supreme Rabbinical Court receive only 35,000 (about \$100) to 45,000 francs (about \$128). Advancement is by selection, not seniority. The judges may hold no other positions except, in certain cases, that of cantor. Despite their low pay, the honesty of the Rabbinical judges has never been questioned in a land where judicial corruption is traditional.

Throughout the history of the Moroccan Jews their Rabbinical courts have been an outstanding blessing in the midst of their ghetto misery. It is surprising to note the large proportion of cases which are informally settled in these courts; in 1946, for example, of 4,808 cases brought before all Rabbinical courts, 2,426, or about half, were settled by this means. The Rabbinical courts have accomplished their great work in the most depressing and uninspiring physical surroundings. In Casablanca, Morocco's largest city, the Rabbinical court, like others in Morocco, has only one chamber even though six judges may be assigned to it. In most of the courts the indispensable dignity of the physical arrangements of Western court rooms is entirely lacking.

The French reforms have strengthened the great service the Rabbinical courts perform for the Jewish community. These reforms, however, have also had the effect of reducing the jurisdiction of these courts. The Jews had developed a custom under which they had a right to bring before the Rabbinical judges not only matters of personal status, succession and religious affairs, but also civil and commercial cases involving only members of the Jewish community. A dahir or decree of May, 1918, however, ordered that the Rabbinical judges might no longer handle these latter kinds of cases, but that they must send them to the cayids and pashas. In this way France restricted the jurisdiction of the Rabbinical courts to that set forth in the dahir of August, 1913. The Jews, nevertheless, continued at times to bring civil and commercial cases before the rabbis, whose judgments they respected. In February, 1938, consequently, a ministerial circular ordered that the dahirs of 1913 and 1918 be strictly observed.

Comparison between the Rabbinical courts and their counterparts, the Moslem religious courts, quickly exposes grave formal inequalities. First, Rabbinical courts, as we have just remarked, may not decide civil or commercial cases involving only Jews even if voluntarily brought before them. Moslem courts, on the other hand, may handle similar cases among Moslems. Second, any case dealing with personal status and involving a Jew and a Moslem must be brought before a Moslem court. Third, Moslem courts may handle all cases involving Moslems, whether of Moroccan or other nationality.

The Rabbinical courts, however, may not handle a case involving non-Moroccan Jews. Fourth, while a Moslem never appears before a Rabbinical court, a Jew may often find himself engaged in a suit over which a Moslem court has exclusive jurisdiction. Fifth, documents prepared by Jewish notaries are invalid in the Moslem courts, but the documents prepared by Moslems are valid.

These inequalities indicate the great need for an overhauling of the Moroccan judicial system. The Rabbinical courts, in particular, need to be endowed with greater prestige through improvements in recruitment and status of the judges, provision of more dignified quarters and by granting to judges the powers they need to maintain order in their courts.

### ***The Moroccan Courts***

Under the influence of the French Protectorate, the Moslem (or "Maghzen") courts are becoming general Moroccan courts of common law. As such, they are the courts most often resorted to by Moroccan Jews.

Maghzen courts of first resort are of two types. In the tribes the cayids are the judges, while in the towns there is a pasha as president of the court, with two deputy judges having only advisory functions. In the less important cases the pasha sits alone. The next higher courts are likewise of two types: first, the pashas receive certain types of appeals from decisions of the cayids; second, the Supreme Sherifian (Moslem) Court handles all other cases. The Supreme Sherifian Court, sitting at Rabat, is composed of four divisions, criminal, misdemeanors, civil and commercial, and common law. This appeals system was established by the French reforms of 1918. Previously, there was no appeal from Maghzen court rulings, except to the Minister of Claims, who usually rejected such appeals.

Procedure in these courts is relatively simple both in criminal and in civil or commercial cases. The Maghzen courts pass only provisional judgment, for their rulings are subject to review by the Sultan. In criminal matters these courts cover all kinds of offenses, but the most serious ones go to the Supreme Sherifian Court. In civil and commercial matters they likewise handle all kinds of cases except a few types reserved for other courts. As to persons, these courts have jurisdiction in cases in which all the parties are Moroccans, Moslem or Jewish, and where the defendant is a Moroccan and the plaintiff under United States jurisdiction. But certain kinds of proceedings, as we shall see in the next section, are reserved for French courts, and a

Frenchman may not be a party to a civil aspect of a criminal proceeding before a Maghzen court.

The method by which judges are assigned indicates the nature of the Maghzen courts. Properly speaking, the cayids and pashas are not judges but government officials with judicial as well as administrative functions. They are appointed by the Sultan without having to fulfill any special requirements. The deputy judges, however, have been recruited by competitive examination since 1945. Candidates for these posts must (1) be Moroccan Moslems between the ages of 21 and 35, (2) have the approval of the Grand Vizir and (3) be graduates of the University of Kairoween at Fez, or have a certificate in Moroccan judicial and administrative studies, or a French baccalaureate degree, or a master's degree in arts or law. The judges of the Supreme Sherifian Court are chosen from among these deputy judges.

Maghzen courts are under the control of French officials. One of these officials in the Department of Sherifian Affairs is also the government commissioner to the Supreme Sherifian Court. There is a French government commissioner at each court presided over by a pasha, while a lesser official represents the French government at each cayid court. These officials are public prosecutors. In 1924, a decree established a corps of defense counsels to be attached to the Maghzen courts. Their freedom of action and their effectiveness are limited by the severe disciplinary measures provided for those who are held to have abused their status; these measures range from simple warning to withdrawal of their right to practice law.

Maghzen judicial procedure has several serious shortcomings, especially for Moroccan Jews. First, the Jews are accustomed, in their Rabbinical courts, to having their cases heard by three judges, but in the Maghzen courts a single judge presides. Second, only the members of the Supreme Sherifian Court are recruited by competitive examination, but their independence is limited by the fact that their rulings are subject to review by the Sultan. Third, the cayids and pashas, as judges, are really representatives of the Sultan, the chief Moslem of Morocco. One of the persistent demands of the Jewish community is that Jewish assessors sit in the pasha courts when at least one party is Jewish. Fourth, in Maghzen courts deeds prepared by Jewish notaries have no validity; proof is thus sometimes difficult to present. Fifth, Jews in the Maghzen courts are judged according to Islamic law, which is not their law. At the same time, it is almost impossible to understand Islamic law fully since it is not codified. Sixth, the rights of defendants are limited by the threat of withdrawal, upon the initiative of the government commissioner, of the defense counsel's right to practice, even though this extreme step is seldom

taken. Seventh, the judges, the pashas and cayids, are especially incompetent, are not versed in the law, and are influenced by the government commissioners, who are not judges but administrators.

Above all, the Maghzen courts lack independence. The cayids and pashas have both administrative and judicial functions and powers. They, in turn, are appointed by the Sultan, who has legislative power. Thus Morocco is ruled in a confusion of powers and functions. There can be little guarantee of impartial justice when the judges are totally dependent upon the government, are ignorant and often greedy, are rulers as well as judges and directly control the defense in cases brought before them. This entire arrangement works a special hardship on the Jews, apart from the discriminatory features already enumerated, who are accustomed, in their own courts and in their attachment to Western ways, to a more advanced judicial system. Only a complete reorganization of the Maghzen judiciary can right these wrongs being committed daily in the name of justice.

### ***The French Courts***

The French judicial system in Morocco, the best of all, is an excellent one which insures fair treatment for all litigants. Moroccan Jews as a rule have recourse only to Rabbinical and Maghzen courts but there are some situations in which they may appear in French courts too. A brief review of the French courts will reveal the great limitations of other Moroccan judicial systems.

The main French courts, organized in 1913, are:

- (1) civil and commercial courts—justices of the peace and courts of first resort, appellate, arbitration;
- (2) penal courts—police, correctional, criminal;
- (3) special courts—military, and certain other courts we need not consider here.

French courts in Morocco are organized on the same basis as in France. Judges are selected as in France and have the same functions, duties and powers. The bar, likewise, is organized as in France. The rights of defense are well established and observed, and disciplinary action against lawyers may be taken only by a board composed of lawyers. Procedure follows that of French and other Western courts, except for minor local variations. The French courts have much broader jurisdiction than any other Moroccan courts, but we shall enumerate only those cases in which a Moroccan Jew may have occasion to appear in one of them. These occasions are:

- (1) If he is a party to a case in which another party is a Frenchman, is under French or certain other foreign (excepting United States) jurisdiction, or is a citizen of another country. But if inheritance of the property of a Jew is involved, the case goes to a Rabbinical court.
- (2) If a case involves a dispute over the registration of real estate or over real estate already registered, or if a Jew appears as a representative of a firm.
- (3) In administrative matters.
- (4) If a case involves matters provided for by special laws, such as that of public domain and expropriation.
- (5) If a case involves an injury to a Frenchman or a foreigner.
- (6) In cases of crimes or misdemeanors committed or aided by persons subject to French jurisdiction.
- (7) In cases of infractions committed in certain places, for example, in a courtroom.
- (8) In cases of infractions committed before French courts, such as false testimony and false oath.
- (9) In cases of certain infractions listed in special decrees on various subjects.
- (10) In cases relating to personal status or inheritance if they involve another case already in process.
- (11) In cases involving determination of citizenship.

French justice in Morocco is of the highest order and ought to prevail even more widely. It would be especially valuable if the Moroccan Jews, oriented toward Western culture and legal practices, could have the choice, in civil cases, of appearing either in a French or a Maghzen court. This would merely be the realization of a plan already proposed by the Commission on Judicial Reform in 1944.

### ***The United States Courts***

American courts in Morocco date back more than a hundred years to the time when Turkey extended to the United States certain special privileges there (this arrangement is known as the "capitulations" regime). The United States today is the only nation which still enjoys these privileges. Under them it established two courts. One at Tangiers, presided over by the American Minister to Morocco, handles the important matters, while the other, at Casablanca, is presided over by the American consul and handles less important cases.

A Moroccan Jew rarely appears in an American court, only when he is a party to a case in which one of the defendants is under United States jurisdiction or is a Moroccan under American protection, except in real estate cases, which go to the Moroccan or French courts. Procedure in the American courts is simple, and justice is swift and eminently impartial but also, some Moroccans feel, merely because they are consular courts and not an integral part of an established judicial system, somewhat unpredictable.

### ***Conclusions and Recommendations***

The strangest aspect of this tripartite judicial system we have been discussing is the complete separation of each element, the Rabbinical, Maghzen and the French courts. There is no supreme court to unify them. Unlike in Algeria, which is an integral part of metropolitan France, the decisions of the Rabbinical and Moslem courts may not be appealed to higher French courts.

Freedom to select among the types of courts has been an issue in Morocco since 1918, when the French reorganized the local judicial system. An early version of the reorganization plan included the right to choose a French or Maghzen court, but this provision was omitted from the plan as enacted into law. In 1944, as we have just mentioned, the same recommendation was made by the Commission on Judicial Reform established by the French Resident General. In May, 1945, this right of option was admitted in Tunisia, another French North African territory.

Since 1918, France has made several important judicial reforms in Morocco, but the primary problem, that of separating the judiciary from the administration in order to further the independence of the courts, has been neglected. In the Maghzen courts, especially, the judge is part of the administrative apparatus of the government. This outmoded condition is aggravated by certain scandalous practices at the lower judicial levels. Morocco needs, also, the kind of corps of professional career judges which France has developed in Tunisia. A reform plan submitted to the Sultan in 1948 proposed that the pashas be replaced by trained career judges who would preside over courts of first resort and of appeal. The Supreme Sherifian Court, which would be independent under this plan, would include a special appellate division. These reforms have thus far not been carried out because of the Sultan's opposition to them, but even apart from this barrier there would be the problem of securing competent judges. The Moroccan School of Administration would, over a long period, help solve this problem.

Another pressing need is for codification. In 1913, a civil and a commercial code were promulgated, but they are followed only in the French courts. These codes ought to be extended to the Maghzen courts, which now lack a code by which laws are made consistent and predictable in application. In criminal law the absence of a code is especially felt. Take, for example, the misdemeanor of religious defamation, which concerns the Jews. In practice a Jew accused of having insulted the religion of Islam finds it impossible to exonerate himself and is subject to the arbitrary judgment of the pashas, most of whom well know that such accusations are usually fraudulent and are made out of personal rancor. It would be desirable to enable a person accused of this misdemeanor to offer his oath and affirm his innocence, and it would be fair procedure to punish false accusers. The promulgation and application of a penal code is a fundamental requirement of justice for all Moroccans, Moslem and Jewish. Such a code has already been prepared and, it has been indicated, all obstacles to its promulgation have been removed. But mere promulgation of the code will be only a step to placate public opinion and the code will be ineffective unless adequate machinery is set up to enforce it.

All Moroccans stand to gain by the reform of the judicial system. The Jews, who suffer most from the many limitations of the present system, stand to gain most.

## 6. EDUCATION, CIVIL LIBERTY AND GOVERNMENT

Under the French Protectorate ideas of liberty quickly spread in Morocco despite the fact that in traditional Islam such ideas were not common. While the Western concept of liberty is still far from being fully accepted, whatever progress there has been in this direction is the result of French influence.

### *Education*

Morocco's awareness of its need for modern, compulsory, universal education indicates the influence of the West. There are many school systems, not all of which maintain reasonable Western standards. The European schools, open also to Moroccans, educate about 52,000 pupils in kindergartens, primary and secondary schools. Among these pupils are 2,800 Jews and 1,800 Moslem Moroccans. Until about 1938, Moslems were reluctant to send their children to any schools where secular subjects were taught. Education for

Moslem Moroccans is given by several types of institution. There are three secondary schools which include about 1,000 pupils. Ten special schools for the sons of prominent Moslems take care of another 3,000. Nearly sixty urban elementary schools have more than 20,000 pupils, while 114 rural schools of this level include 15,000. There are nearly 10,000 pupils in attendance at twenty trade schools, and about 17,000 girls attend 115 special girls' schools. Almost 20,000 pupils are enrolled in about 350 auxiliary schools. The total of all pupils in the Moslem schools is about 115,000.

Technical education at the secondary level was tied to the European school system up to 1945, when the Department of Public Education set up a special apprenticeship program in the Moslem schools. This type of education is now given in the Commercial and Industrial School of Casablanca, the commercial and agricultural divisions of the secondary schools and in workshops attached to the primary schools.

Primary education for Moroccan Jews is given mainly in the schools maintained by the Alliance Israelite Universelle, which opened its first institutions in Morocco in 1863, a half-century before the establishment of the French Protectorate there. The Alliance schools were given official standing in 1924 in a convention by which France entrusted that organization with the education of Moroccan Jews, under the supervision of the Department of Public Education. An agreement between the Alliance and the Moroccan government set forth the conditions of the latter's approval of the Alliance schools, which are defined as those in which a majority of the personnel are recruited, paid and administered by the Alliance. The staff of the Alliance is trained in Paris at the Jewish Oriental Normal School; "auxiliary" teachers are recruited in Morocco. In the Alliance schools pupils receive not only an education of the Western kind but also daily instruction in the Jewish religion and history and the Hebrew language. The Alliance recently opened in Casablanca a training school for teachers of Hebrew.

Along with the public schools, Alliance schools are subject to control and inspection by the Department of Public Education, with respect to personnel, program, books, pedagogy and discipline. The Alliance has its own representative, approved by the Moroccan government, to the Department. This representative, subject to the control of the Alliance Central Committee, is authorized to deal with those personnel matters which do not involve the French or Moroccan administration, with the teaching of Hebrew, religious instruction and school plant and premises. The French government annually gives the Alliance a sum of money depending upon the number of pupils in Alliance schools and the number of teachers with certain qualifications.

Since 1946, the Alliance has received an annual subsidy from the American Joint Distribution Committee.

This year there are about 24,000 pupils in Alliance schools, a great gain over earlier years. In 1923, there were 5,863 and 14,822 in 1935. Aside from the Alliance schools, about 2,700 Jewish pupils attend a small number of French schools for Jews which are operated by the Moroccan Department of Public Education. Another 2,000 attend European elementary and high schools.

There are thus about 29,000 Jewish children in Morocco who receive a modern education. Despite considerable progress, therefore, much still remains to be done. Over 10,000 Jewish children are abandoned to themselves in the Mellah, where, in inconceivable poverty, they roam the streets, subject to all kinds of diseases and evils. At best, they are gathered in Hebrew schools without light and air, and are given a medieval education by poorly qualified teachers. Certain communities provide a little better education in the Talmud Torah, but this type of school is also below the level of the French public schools. This problem becomes more acute from year to year and cries for solution.

At present there is not a single secondary school especially for Jews in Morocco; about 900 of them attend European schools. There is certainly room for a lycee or college to absorb those Jewish pupils who cannot enter the European secondary schools because of lack of space or because they want to observe all Jewish holidays.

For technical education there are fifteen vocational *classes* only. Recently, however, the ORT and the Alliance have cooperated in the opening of some trade schools for the youth of the Casablanca Mellah eager to learn a vocation in order to save themselves from unemployment. About 1,000 Jewish youths are receiving technical education this year.

Higher education in Morocco is open to all persons on the same basis as the secondary schools. Institutions of higher learning include: 1) the Moroccan Institute of Higher Studies, to which is attached the Center of Juridical Studies; 2) the Center of Higher Scientific Studies, which prepares students for medical schools and for later study for the master's degree in science; 3) the Arab Scientific Institute; 4) the School of Laboratory Technicians, recently established in Rabat. These institutions, attended mainly by Europeans, had 834 students in 1948, among whom were ninety-five Moslems and forty-four Jews. This year there are seventy Jewish students in these institutions of higher learning.

It is clear from this review that the main problem for all Moroccans

as well as for the Jews is that of primary education. In 1949, the Committee on Education of the Council of Government proposed a broad program of reform to include: 1) compulsory free education; 2) unification of primary education and establishment of a primary school certificate as a prerequisite to enrollment in a technical school; 3) increase in the number of rural and teacher-training schools; 4) distribution of a credit of fifty million francs to the traditional Moslem schools on condition that they modernize according to a simple plan; 5) increase in the number of scholarships; 6) development of technical education; 7) creation of a University of Morocco and a council on education; 8) material and moral aid to students taking higher degrees in France.

### *Civil Liberty*

Morocco, before the French Protectorate, was a theocracy tempered by corruption and, to a lesser degree, by aspirations, common to all Islamic communities, toward fraternity and equality. The concept of liberty, although not entirely alien to the country, was colored by Islamic theology. In Islamic law every Moslem is considered a free man unless shown to be otherwise. Slavery was not outlawed, but the slave had a legal status which to some degree protected him against his master. Since in Islam liberty is not a natural right but a grant by God, the Moslem theoretically remains free only so long as he obeys the laws of God. In contact with French culture, these Moroccan ideas of liberty were inevitably enlarged as the French, through their schools, widened the horizons of successive generations of the Moroccan elite groups.

Several decrees inspired by France have guaranteed certain civil liberties to Moroccans, but the Sultan can at will modify or abolish them without violating Moroccan public law. Despite piecemeal advances, therefore, Morocco still lacks what is essential for the acquisition and maintenance of certain rights, that is, a constitution. No genuine advance is possible without this basic law.

Such a basic law would not be incompatible with the Sultan's sovereignty. In effect, a constitution would require that the Sultan voluntarily limit his sovereignty and rule that all his laws must be in accord with it or be invalid. It is proper here to distinguish between the spiritual and the secular realms of his reign. The development of a constitution is not without precedent in North Africa. In 1857, the Bey of Tunis granted a constitution establishing complete equality among all his subjects and assuring them certain fundamental rights, especially that of property. This constitution was later

abrogated, but that does not prove it was incompatible with the law of the Koran.

Respect for the sovereignty of Morocco has deterred France from formulating the country's fundamental public law. France can act only within its proper domain in Morocco, which is to direct the country toward a broader conception of human rights and to lead it toward greater civil liberty, that is, freedom of the press, assembly and association, the rights of labor, and the freedom to work as one wishes. Since 1914, France has inspired several decrees on these matters which have meant great advances in freedom, but civil liberty in Morocco is still far from what it is in the West.

### *Public Office*

From the time of the Moslem conquest of Morocco in the seventh century until only a few years ago a Jew in principle could hold not a single position in a government agency. In practice this principle was only slightly mitigated. When France assumed the Protectorate it did not substantially alter this situation. The local administration was Moslem, but it was later divided into two parallel systems: a French service, under the control of the Resident General, accepting only French citizens; and a Moroccan service, for which the Sultan chose only Moslems. Jews could enter only the administration of the Jewish communities or the Rabbinical courts. Later, French administrative rules permitted Jews to obtain certain types of public employment.

In 1938, the French Resident General opened a number of posts to all Moroccans and, for the purpose of determining the results of the competition for them, set forth Moroccan equivalences of French educational levels. But these equivalences in certain cases turned out to be purely theoretical and illusory, since Moroccan Moslems and Jews who qualified for designated posts could not obtain them anyway. It is still not rare for a young man or woman, armed with all the required diplomas, to find the doors to employment closed on some illogical pretext or other.

This ruling of 1938 was amended the following year in a way which made it even less liberal. First, the entrance of Moroccans into the French service now required prior authorization by the Sultan's Grand Vizir. Second, Moroccans could compete only for those posts specifically reserved for them, as determined by a commission headed by the Grand Vizir.

Partly in response to local political demands, an administrative commission met in 1944 to consider changes in this arrangement. The result was a proclamation of equal treatment for all office holders in the same grade

and with the same functions. Despite this seeming equality, however, Moroccan Jews found their position still inferior to that of French citizens. From the first, no native Moroccan could, according to the changes made in 1939 and which are still in force, fill certain posts. In general, few Moroccans obtained jobs under these rules, and none was given a high post.

In addition, a decree issued in 1948 by the Resident General permitted certain jobs to be filled not by competitive examinations but by selection on the basis of the candidates' records. While not in itself discriminatory, this system worked to the detriment of Jewish candidates. Since 1948, nevertheless, this situation has steadily improved.

The promise of the Resident General's decree of 1938 has, however, not been fully realized. The only important post a Jew may hold in the French administration is that of Inspector of Jewish Education and Institutions. To eliminate the unfairness in this situation would seem to be a rather simple matter. The French government would merely have to make all appointments on the basis of open, competitive examinations. This, of course, would apply only to the French administration. As for the Moroccan administrative service, Jews are absolutely excluded from all levels because of the fundamental nature of the Moroccan theocracy. To remedy this situation would require a complete change in the essential form of the Moroccan state, something which hardly seems possible without a profound change in Moslem thinking.

### ***Representative Institutions***

Established in 1919 by a decree of the Resident General, the Council of Government is the only representative body of the Moroccan people that is in contact with the French and native Moroccan administrations. The Council takes on a special character by virtue of the nature of the French Protectorate and the theocratic form of the Moroccan state.

While its composition has been considerably enlarged since 1919 to represent the various elements of the population, the Council's fundamental powers have remained substantially the same. The changes in composition, however, have had important consequences for the Jews. Several earlier reforms did little to improve the Jews' representation, but in 1947 a decision of the Resident General, brought about in part through the support of the Alliance Israelite Universelle, established that the various "interests" should be represented in the Council. This decision facilitated the Council's evolution to the status of a political body representative of all the people, not merely one based upon occupations. It gives the Moroccan Jews six delegates, elected

by the members of the Jewish communities (as reorganized by a decree in 1945) of Casablanca, Fez, Marrakech, Meknes, Oujda and Rabat. For the first time, then, Jews were permitted to participate genuinely in the management of public affairs.

The Council of Government remains a French governmental body with a special economic or occupational character. Its domain is exclusively budgetary and its powers purely advisory; it is thus not really a representative legislature.

This reform of 1947, despite its shortcomings and its belatedness, is a substantial gain for the Jews of Morocco. For the first time it enables them to emerge from their isolation and to participate in an essentially French political institution. Jewish delegates to the Council of Government, by performing their functions capably and with dignity, show clearly that Moroccan Jews are anxious and ready for greater political responsibility and advancement in the direction of Western culture and civilization.

## 7. THE FUTURE OF MOROCCAN JEWRY

Our discussion of demography, community organization, personal status, citizenship and nationality, the judicial system, education, civil liberty and public employment has defined the place of the Jews in the life of Morocco. Within the Sherifian empire they constitute a fully differentiated religious group living in all parts of the land, but especially in the towns. Totally excluded from public life by the theocratic character of Islamic society, which has considered them strangers, the Jews have changed considerably since the beginning of the French Protectorate in 1912. In several decades they have leaped over the centuries which separated the circumscribed life of the Middle Ages from the most advanced life of our own day. Today the Jew tends to reject ancient dress in favor of modern; he forgets the language of the *Mel-lah*, a mixture of Hebrew and Arabic, and learns French and modern Hebrew instead; he adopts Western ways in place of the Oriental. Starting from an incredibly low level, Moroccan Jews have shown a great facility for adaptation and especially for applying the habit of learning to modern problems. They are rapidly developing scholars, lawyers, doctors, teachers, clerical workers, skilled workers and farmers.

These advances have been the responses to the actual conditions of life, and have not been stimulated by legal means. The result is a wide gap between the social situation and status of the Jews, on the one hand, and their

legal status, on the other. A further expression of this disequilibrium is the continuous migration of Jews from the backward southern regions of Morocco to the more advanced northern areas, from the rural districts to the cities, and from the cities out of Morocco and into Algeria. This movement reveals a strong desire on the part of the Jews to root themselves in Western civilization. Dissatisfaction with present conditions has many causes. As a Moroccan the Jew shares with other Moroccans, of whom he is often the poorest, economic poverty that is hard to imagine. Further, as a Jew, he carries the burden of a difficult past: a visit to the Mellah of Casablanca or Tarroudant reveals a Dantesque spectacle of inconceivable misery. When he entered the Mellah of Marrakech for the first time, Marshal Lyautey, France's first Resident General in Morocco, declared: "It is necessary to raze this entire area."

In addition to these social evils, there are, of course, the many legal disabilities which Moroccan Jews must endure. The Jew, because of his religion, is by law excluded from all the functions of government in the Sherifian empire. Inferior in every legal aspect, the Jew has no guarantee of justice; instead, he is abandoned to the mercy of the judges.

The French have instituted significant reforms. They have freed the Jews from the unlimited arbitrariness which kept them subject to the pleasure of their masters. The Jews are now free to dress as they like, to come and go freely and to raise their economic status. In principle, at least, they now have rights equal to those of the Moslem Moroccans, in contrast to their former inferior status as "dhimmis"; the Sultan himself has made many declarations of equality among all his subjects, Jewish and Moslem. Several decrees inspired by France have, since 1918, given legal standing to the Jewish communities. In 1947, the Jews finally secured the right to participate in public affairs and in the Moroccan representative assembly by electing delegates to the Council of Government. This reform is of great significance for their future.

Moroccan Jewry feels a strong attraction to Israel. Thousands have emigrated to the new state, yet it is clear that there will remain, even if this emigration continues, a substantial Jewish community in Morocco. For both segments of Moroccan Jewry, that which goes to Israel and that which remains, economic, cultural, health and political reforms are essential. Those Moroccan Jews who go to Israel must not become a further burden on the already overburdened young state. Those who remain must be enabled to live with dignity, in at least a modicum of economic security, as Moroccans, as Jews and as human beings in an interconnected world.

### ***Summary of Necessary Reforms***

The reforms which are essential to the continued improvement of the condition of Moroccan Jews have been discussed in detail in the previous sections. Here we may summarize them in two broad categories.

The first group includes reforms which relate to the Moroccan community as a whole or to Moroccan Jewish relations with the general community.

1. The most advanced Moroccan Jews should be made eligible for French citizenship. We have already shown how this reform can be instituted with the approval of the Sultan.

2. Those Moroccans ineligible for French citizenship should be permitted to place themselves under the jurisdiction of the French courts in order to escape the anarchy, incompetence and venality of the Maghzen courts. Such a development would enable the Moroccan community as a whole to advance and would not be incompatible with Moroccans' status as subjects of the Sultan, since the French courts render their decisions in the name of the Sultan.

3. Today "human rights" is a byword. The Moroccan authorities must understand that these rights should be applicable to Jews too, whose status ought to be equal to that of the Moslems in law and in fact. Such equality should extend to eligibility for government posts and for participation in official bodies and councils free of obstacles of a religious nature. Such reforms require a profound adjustment in Moslem customs and in the theocratic structure of the Moslem state.

4. The entire judicial system needs reforms, including the promulgation of legal codes and the establishment of an independent and competent judiciary.

The second set of reforms relates to internal Jewish affairs.

1. We have already discussed the rapid Westernization of the Jews of Morocco, especially since 1945. Through a concerted program the French government ought to help the Jewish communities to realize their desire to escape such backward traditions as still prevail. One of the main tasks here is the full emancipation of women and the institution of the reforms of personal status which we outlined in Chapter Three.

2. The position of the Jewish Community Councils should be strengthened by granting them, especially, the right to represent Jewish interests in dealing with the government authorities. The general and local activities of these Councils should be increased in order to facilitate the emancipation and Westernization of Moroccan Jewry.

3. Under the proper administrative arrangements a government commission, including representatives of the major divisions of the Residency, should be established at Rabat for the study and settlement of the problems of Moroccan Jewry.

These problems are complex, but they can be solved. Within a brief period French influence has led to great achievements. Deserts have become fertile. A country which had few external relations has recently discovered the vast world outside its own borders. The anarchy of a hostile tribal order has given way to civilized national progress. French influence has been even more favorable for the Jews of Morocco. Despite these advances, however, much remains to be done to overcome negligence and injustice in the legal system, social services, housing, education and public health. Since all Moroccan problems are interrelated, the advancement of Moroccan Jewry's status and welfare will inevitably benefit the entire Moroccan community.

The future of Moroccan Jewry touches upon the broader question of relations between Western and Oriental society. Through the concept of human rights these two types of civilization can establish a peaceful and mutually beneficial equilibrium. The Jews of Morocco, on the margin of the West and the Orient, can become the bridge which will join the Moslem society of Morocco to the Western society of France. Such a development would show that nationalism need not be exclusive and chauvinistic and that distinct civilizations can co-exist peacefully, united by a common passion for amity.